683 other, the debate would continue for two days and three nights without food or sleep."[59] However, in most [692] cases, the chief or an elder was present to render judgment or to propose reconciliation. Judgment was based on precedent and it seems that the various trials and tortures mentioned above served chiefly to enable elders to reach a decision. Trials were open to the public and unless the elders sitting in judgment reached a unanimous decision no verdict could be handed 696 down.[60] Execution of punishment was not necessarily carried out by the chief but was left up to the group and only when a case concerned the entire village or could not be settled by the group was the chief called upon for his decision. There were no set codes of punishment nor were there specific penalties meted out for specific crimes, instead retribution was imposed according to precedent and custom. For example, in 684 regard to the penalty for adultery, that crime of which 189 we find the most frequent mention in the records, the *Tōyū Zakki* [Miscellany of a Trip to the East] 562 says, "In rare occasions where there is misconduct the man is not punished but the woman is beaten to death with a club and cast into sea." While there is some doubt that this was the standard punishment we find in a report by Nagata Hosei that adulterers were wrapped in a straw mat and thrown off a cliff into the sea,[61] which is a confirmation of the existence of the death penalty. The *Ezo Zakki Yakusetsu* remarks, "When a married woman committed adultery her hair was cut off and she was made a nun," while the *Ezo Dan Hikki* confirms the removal of the hair as punishment. "In general the law of the Ainu was not 684 limited to the wife. If a man outraged a woman he was punished by having his hair torn out." Other cases seem to have been settled by fines. The *Hokkai Zuihitsu* [Notes on the Northern Sea Area] mention this: "When there was misconduct treasure was ordered to be given to the other party as a token of apology and as atonement for the crime." And in the *Igen Zokuwa:* "It was a serious matter when a married woman made illicit love. It resulted in atonement and the submitting of a great amount of treasure." From the *Watarishima Hikki:* "When adultery was exposed, the culprits were punished by law. However, at times, there would be an arbitration and the parties would be reconciled with the payment of atonement." According to Batchelor, cases were sometimes settled by *Ukarii* which will be discussed later.[62] The *Hokuto Sanjin Monogatari* [Hokuto Sanjin's Story] notes: "It is seldom that a woman will commit adultery. However, if it happens and becomes known to the husband he immediately cuts off his wife's nose. During my sojourn in that country I have seen only two or three

[59] *Tokachi Shū Ryakusetsu.*
[60] *The Ainu and their folklore,* 237.
[61] Nagata Hosei, Ainu no shikei (Death penalty of the Ainu), *Keiriu* 7: 28.
[62] *The Ainu and their folklore,* 241.

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681 The payment of atonement came not only
[576] after a violation of the law but also after a violation of
[689] manners and customs such as sitting down without regard to custom,[67] looking into a house through "God's window,"[68] speaking the name of the dead,[69] talking about the secrets of other people, looking at unclean things,[70] or disturbing a sacred place.[71] *Ashinpe* was therefore not a mere fine but a gift used to beg pardon of God for in the very presenting of the gift was implicit an apology to God. When disputes were settled among persons there was no question about the distribution of *Ashinpe*. But if the chief had acted as judge
[622] he collected the *Ashinpe* and distributed it to the injured
[695] party. This is described in Sakai Tadaiku's *Hokkaidō Junkōki* [Record of a Tour of Hokkaidō] as follows: "When a person did wrong, he was reprimanded and made to atone after which he was set free. The disposition of this atonement was the duty of the *Otona*." In the *HDHS* it is said that "the chief after passing judgment would collect from the guilty party wealth in accordance to the offense and give it to the injured party." The *Tsugaru Kibun* notes: "When an offense has been committed through error, the chief of the village would examine the case and impose a fine on the party to blame and present this to the other party." It is evident that those in power could abuse this custom and acquire wealth by challenging others to a *Charanke* over a trifle.

681 Another important method of settling disputes was
578 a duel with clubs. This was the *Ukaru*, *U* meaning
627 "mutually" and *Karu* meaning "to beat," the whole word literally being taken as to beat each other with clubs. The clubs were called *Shuto*. This custom was called *Shutouchi* in Japan and the term became corrupted to *Suzuuchi*, *Sutsuuchi*, and *Tsuchiuchi*. *Shutouchi* along with *Tsugunai* was an important method of settling disputes. The *Waterishima Hikki* notes: "When a matter was arbitrated between two individuals *Tsugunai* was offered and if it was refused the one was beaten on the hip by the other with a club until he bled and apologized. This is called *Ukaru*." The *Hokkai Zuihitsu* states: "This was used when one so

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[67] *Tōkai Yawa*.

[68] Chiri Yukie trans., *Ainu Shinyō Shū* (Ainu psalms), 116–117, fn. ['God's window' was opposite the entrance and back of the altar in an Ainu house. Sacred and covered with a screen, it was a sacrilege to peep through this window through which the bear was carried into the huntsman's house.]

[69] "Without knowing that his parents and family were dead I asked him how they were whereupon tears came flowing from his eyes and greatly enraged he demanded atonement." *Waterishima Hikki*.

[70] "It is said to be the law of this country that *Tsugunai* had to be paid if one saw the vagina." *Tōi Shūran* (Observations of Eastern Ezo), vol. 2 of *Ichiatsuzoku* (Conversations about the land of the barbarians).

[71] "They did not do any thing rude facing the sea. Therefore, if an Ezo found another urinating toward the sea he would immediately demand *Tsugunai*." *Ibid*. "A person urinated upon the grave of an Ezo's father. The Ezo was furious but the argument was settled by presenting *Tsugunai*." *Tōjō Ki*.

power of the village was insufficient to cope with the problem. This is discussed in *Eso Miyage* in part as follows: "A chief or a person proficient in speech would act as arbitrator, give his decision and make the parties come to a peaceful settlement, he even, at times, offering goods of his own. Therefore, up to now, disputes have never been taken to the Matsumae for trial."

4. SUMMARY

The life of the Ainu, at the time the Japanese were beginning to exert control in Hokkaidō, was not as primitive as might be assumed but was instead comparatively advanced and included division of labor. Economically the Ainu had passed the hunting and fishing stage and were moving into the agricultural or cattle-raising stage. They were engaging in foreign trade as the family became an economic unit and the communal economy of village life dissolved. In the regulatory sense the chief was a political figure and the Ainu village was no more than a body of kinsfolk evolving into a local organization. The original state of Ainu society has been assumed to be a group of a small number of families centering around the chief family, all of which originated, presumably, from a common couple. Each family was led by the head of that family while each group of families was headed by an elder who was usually the eldest member of the head family of a village unit. The Ainu lived where it was most convenient. When the number of people in a village group increased in excess of the number that could be supported by their local production the group would split up and a part or parts of it would move as a new group or groups to other parts of the country. As the geographical scope widened, the relation between the mother village and the scattered villages became less intimate and each village tended to take on more of a local color and less of that of the parent village. At the same time it became more difficult to control a village through kinsfolk relationships. It became so that a leader needed more than lineage. During this period it seems to me that the most significant event among the Ainu was their growing contact with outsiders especially trade relationships. Contact with outsiders not only introduced more highly developed methods of production but made possible the accumulation of wealth. Those superior in trade or production gradually became economically dominant and an imbalance of wealth replaced the old communal life. Those with large families, having the greatest labor supply, became the wealthiest. This was particularly true of the chiefs. It is interesting to read the following passage from the *Watarishima Hikki*:

> Once a woman becomes a servant or a mistress all the members of her family become members of the chief's family and, although it was then the duty of the chief to support them, they all worked for the chief in hunting, fishing, and gathering grass. There was no private property among families and, therefore, those with many mis-

[P. 22 (B)]

was enforced and that there was no pilfering.[47] Since these men were the only clan representatives sent to Ezo territory they came to have the authority of settling disputes between Japanese and Ezo which was the first step in the acquisition of political power over the tribes.[48]

These regulations were no more than verbal instructions laying down certain rules. In the *Igen Zokuwa* after a narration of the abuses of *Ashinpe* (the atonement penalty practiced among the Ainu) this passage occurs: "In previous years many valuables were offered as *Ashinpe* but since the introduction of rules of penalty by the lord this is no longer practiced"[49]—an indication of the scope of the Matsumae regulations. *Uimamu* was used to appease the Ainu but it was also useful as a measure of rule. Similarly *Omusha* came to lose its economic character. The *Ezo Sōshi* traces the change when it notes that *Omusha* lost its original friendliness whereby both parties patted each other and became a ceremony where the Ainu received officials who occupied seats on a higher level as guests of honor and the author interprets *Omusha* as "an event for entertaining honorable and noble guests." Since the Matsumae laid down these rules the right of punishment for transgression of them lay with the Matsumae. An example of this is the imprisonment of the chief Umushimute in 1693 on the charge that, the previous year, he had spread rumors of the western Ezo revolting at a gold mine in Haporo. Thus, as Hokkaidō became an exploited colony, so did the weight of Japanese rule increase and the Ezo not only lost power but, as will be discussed in a later chapter, their freedom was limited. On the other hand those Ainu who had become followers of the Matsumae gradually intermingled with the Japanese and received equality of treatment. At the time of the independence of the Matsumae clan the area wherein Japanese could reside ran from Kameda in the east to Kumaishi in the west, a territory which included resident Ainu. After the 1669 incident, and despite strict regulations to the contrary, the Japanese began to move past this boundary into more remote areas while, at the same time, the Ainu began to retreat into the interior. In 1550 the chief of the eastern Ezo lived in Shiriuchi but by 1704 there were no Ezo in this area and only a few native

[47] According to a report written in March 1785 and found in the *Hidaya Kyūki* contraband in the contract *Bashos* of Hidaya, which were those at Akkeshi, Kiritappu and Kunashiri were, sea otter skin, bear liver, bear skin, eagle tails, seals, *cburiko* and *hotsuki* [*ubakai, Mactra Sachalinensis*]. These goods were handled exclusively by the Matsumae and the contract merchants could not trade in them. Transactions in them were conducted by the *Uwanoriyaku*.

[48] "Two officials accompanied the goods to Ezo. They were to see that no trouble arose between the trading parties. Also, in loading, the draft and a list of the freight was reported to these officials in writing after which the officials boarded and sail was raised." *Ezo Koku Shiki*.

[49] *SHS* 1 (Illustration No. 1

A F *648 *175 177 627 [692]

hibited there may be those who will have nothing to offer in atonement and therefore will escape punishment. Since there are bound to be disputes which will not be settled unless *Tsuchiuchi*, atonement, or some form of penalty is assessed, it is advised that such disputes be brought before a magistrate and the more serious ones be transferred to Edo for severe reprimand. During the winter when no officials are stationed in the countryside the *Otona*, *Waki Otona*, and *Kozukai* shall accept complaints and report on them as soon as possible when officials arrive in the spring at which time the complaints will be reviewed and proper action taken. Naturally, certain cases will arise from misunderstandings on the part of both parties and it should be noted that, once a case has been brought up publicly and the disputants summoned to official quarters, it will not be possible to settle it secretly.

There has also been a custom of challenging a person to argue over unreasonable matters and having the loser pay atonement. From now on anyone forced into such an argument will report to the officials and receive instructions and the same goes for situations wherein anyone is challenged by an Ezo from outside the *Basho*.

A F [692]

5. There will arise the problem of how to deal with wrongdoers if the custom of *Tsugunai* is forbidden. The following should clear up any doubts on the matter. There is no written law here and all criminal matters are settled according to tradition. The Bakufu wants to educate these people and apply the Japanese pattern of life to this island. In Japan there are laws set up by authority. Murder is punished by death, adultery is punished by death, and theft is punished according to its seriousness—from beating and tattooing for a slight offense to weightier penalties for more serious offenses. There are other laws such as those which reward people, dutiful and obedient to parents, those friendly to relatives, those who are generous, benevolent, and hardworking. There are many other laws which it is impossible to illustrate and which will gradually be introduced on the island. In short, the reason for Bakufu administration is to establish various rules and laws in the hope that this island will be rid of its traditions and come to live like Japan. The *Otona* and *Kozukai* will be village officials as they are called in Japan and they will make every effort to govern their village successfully. They will encourage the people to work hard so that they will not encounter famine and the laborers must be accustomed to the ways of the mainland. This is to result in a great development of the island with the people peaceful and happy under the Bakufu. As the production of the island increases it is beyond the capacity of the Matsumae to handle the situation which is the reason central government officials have been sent to supervise. This territory will be handed back to the Matsumae when, in later years, laws have been set up and the traditions and customs have been altered to match those of Japan.

*648 *175 671 681 177

A [624]

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6. Though it has been said that this land belongs to the Matsumae it must be remembered that all land in Japan belongs to the Bakufu including the Matsumae territory itself. The fact is that this island was so far away from Edo that it was merely given in trust to the Matsumae. Now recognizing the lack of government, the Bakufu is administrating directly, developing this country and initiating laws and rules similar to those of Japan. It will teach agriculture to the people, encourage them to be diligent so they may be self-sufficient, reward people according to their work, and introduce the Japanese language and Japanese-style houses, and educate the people. Therefore, even after this land is given back to the trust of the Matsumae those rules and laws established by the government must be observed and not even the Matsumae may change the standards set up.

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2: Batchelor M-5 (1877-1924)1927
AB6 Ainu AB6

CHAPTER VI

THE VILLAGE COMMUNITY

"Before the tremendous shock of present day civilization, with all its harassing worries, vexatious rules, unbending laws, burdensome taxes, and crowds of immigrants, came upon us," say the Ainu, "our fathers had an easy time of it, without care and anxiety, and lived in quiet contentment and general happiness. But now all is change and the struggle for existence is wiping us out!" Poor fellows, they feel it sadly, notwithstanding all the protection and sympathy they are now getting.

According to ancient tradition, the Ainu people never had a monarchy. The elders of the race divided the government among the inhabitants of the separate villages, thus making each village community a small semi-independent state. And it seems to have worked well. The elders of each village assembled, I was told, and chose a chief and two sub-chiefs to manage the general affairs of the people, the women also being in attendance when such were being chosen. The principal chief, or, in the case of his absence, one of the sub-chiefs, was present at funerals to assist in burying the dead, or at marriages to signify his consent and cheer the young couple with his good wishes, or to assist in dividing up the meat or fish brought in by the hunters and fishermen.

The chiefs, together with the people, including the women, made the laws and sat in judgment upon the law-breakers. There were no law codes or clearly defined prescriptive rights, for the Ainu had no script.

2: Batchelor M-5 (1877-1924) 1927
AB6 Ainu AB6

627 692 The punishment of minor offences and recognized crime was left pretty much to the injured individual and community.

622 627 It was the duty of the principal chief to lead the people in hunting, fishing, and fighting, in conjunction with the sub-chiefs, and to take a prominent part in the national bear festival. He had to attend to the division of the land among his people, to point out to each woman her garden plot, to visit the sick, settle disputes, pronounce sentence on the guilty, and name children. All trials took place in public, and unless [623] the assembled elders of the people assented to the decision of the chief, his judgment was void. This was sometimes practised in secret by the people when I first went among them. That they had recognized advocates to assist in disputes will be seen further on.

622 562 593 [184] In so far as the Hokkaidō Ainu were concerned, in very remote times, and in very small villages, the chief authority was naturally vested in the head of the family, though in Saghalien the mother had a great deal to say in the matter, even taking a higher place than her husband. The husband and father, in Hokkaidō, could do pretty much as he pleased with his wives and children. He could, for example, divorce [586 428] any or all of his wives or disinherit his children. He could punish any member of his family as he thought proper. But, notwithstanding this, it was thought to be better form for him to consult his chiefs and companions in these matters.

624 How this came to be so was explained to me in this way. Suppose any single individual or family should move away from all friends and build a house in the wilds at some distance from any village, as was sometimes the case in Hokkaidō, this would become the nucleus of a new village. Such a settlement would naturally come under the rule of the father, who, as new huts were built near him for the accommodation of his sons as they got married, remained head of the

7:Munro & Seligman D.E-4.5 (ca. 1900-1942) 1963
AB6 Ainu AB6

leges are shared. Moreover, the name is descriptive, and it is not clear whether the Ainu use it among themselves or merely gave it by way of definition in answer to investigation.

Premarital intercourse was prohibited; if such an offence occurred a conference (*charange*) was held and usually a penalty was imposed, often the confiscation of some family treasures. If there was no infringement of *kut* exogamy the couple were allowed to marry. Munro was told that, in the old days, if a married man seduced an unmarried girl it was considered a crime comparable to murder.

It will be seen that the following regulations, which Munro recorded and the Ainu believe were given to their ancestors with the instructions regarding the making and wearing of the *upshoro-kut*, are not all founded on matrilineal exogamy:

1. Kut exogamy in matrilineal descent: Munro did not record that matrilineal exogamy was limited in any particular way, but as he did not find a woman who could trace her descent beyond her great-grandmother, the *kut* prohibition is almost certainly restricted to the *matikir esap utar* described by Mr Sugiura.
2. The levirate, known as *matraie*, 'wife uplifting', was an established custom but is no longer considered obligatory. Mr Sugiura states that marriage with the younger brother's widow was prescribed, but forbidden with the elder brother's widow. Munro states that a widow had the right to live with her eldest son who would be responsible for her maintenance, and that sometimes a special house was built for her.
3. No man might marry two sisters; Munro was told that sisters having the same *kut* were regarded as one person. Polygyny was permitted, each wife having a separate house, but owing to the poverty of the Ainu it was not frequent and Munro does not refer to any examples known to him at the time of his investigation.[1]

[1] However, in a footnote on p. 128 Munro refers to the part played by a junior wife at the funeral of her child but makes no mention of her role in ancestor worship, nor whether the usual *kamui* were represented inside and outside the house of such a woman when a separate house was built for her.

Mr Watanabe states that there is no evidence for Ainu having more than one legitimate wife (*machi*) for whom ceremonies of betrothal and of marriage, with the accompanying *kamui nomi*, were performed. But concubines called 'small wife' (*pon machi*) were recognized. In former times the Japanese established trading posts in coastal areas, and Ainu would come to these for a season, where they would fish, hunt and trade with the Japanese. Such men might be accompanied by a 'small wife'. In any case, if a man kept a concubine he made a separate hut for her.